

(11)
AUG 23 1943

CHARLES ELMORE CROPLEY
CLERK

Supreme Court of the United States

OCTOBER TERM, 1943.

281
No. _____

WADE S. THOMSON, JOHN W. THOMSON, COURTNEY
L. THOMSON, OLIVER C. THOMSON, MYRA M.
JOHNSON, JULIA ELIZABETH THOMSON, BERTHA
THOMSON, GUARDIAN FOR EUGENE THOMSON,
HUSTON THOMSON, CALVIN C. THOMSON, MINORS,
AND LILLIAN CRAWFORD, PETITIONERS,

VS.

LETA BUTLER, ROZELL GRIFFITH, LAURA THOMAS
SHEPPARD AND COM. P. STORTS, EXECUTOR,
RESPONDENTS.

**PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF
APPEALS FOR THE EIGHTH CIRCUIT,**

and

BRIEF IN SUPPORT THEREOF.

W. H. H. PIATT,
808 Temple Building,
Kansas City, Missouri,
Counsel for Petitioners.

ERNEST D. MARTIN,
1121 Gloyd Building,
Kansas City, Missouri,
Of Counsel.



INDEX

Petition for Writ of Certiorari

A. Summary Statement of the Matter Involved.....	2
B. Statement of the Jurisdiction of This Court.....	2
C. Date of Judgment to Be Reviewed.....	3
Statement of the nature of the case and the rulings bringing the case within the jurisdiction of this court.....	3
The said circuit court of appeals ruled (R. 77-85)	4
Cases believed to sustain jurisdiction of this court	5
Questions Presented.....	6
D. Reasons Relied On for the Allowance of the Writ	7
Conclusion	8

Brief in Support of Petition for Writ of Certiorari

A. Opinion of Court Below.....	11
B. Grounds on Which Jurisdiction of This Court Is Based	11
C. Statement of the Case.....	11
D. Specifications of Error.....	14
E. Summary of the Argument.....	15

Argument—

Point I. The judgment should be reversed for the reason a federal question is here involved, arising by violations of the Constitution of the United States, namely: Section 2, Article III, Section 2, Article IV, and Section 1 of the 14th Amendment to the Constitution of the United States	18
In equity.....	19

Point II. The judgment below should be reversed because the Circuit Court of Saline County, Missouri, was and is an arm of the state and when it rendered its judgment, it was and is the act of the State of Missouri, and brings this case within the inhibition of the 14th Amendment to the Constitution of the United States.....	21
Point III. The judgment below should be reversed for the reason that Frank Bush's sworn statement, application to be made a plaintiff and adoption of the complaint, a copy of which he attached to his affidavit, all voluntarily in good faith made and filed by him by permission of the district court may not be abrogated by a later unsworn, inconsistent, contemptuous, ancillary, purported entry of appearance as a defendant, in purposed trick to deceive the court and divest it of jurisdiction, when he is not an indispensable party, and, under the rules of the procedure for district courts, should be aligned as an involuntary plaintiff.....	23
Bush not an indispensable party.....	25
Ancillary	25
Citizenship not essential.....	26
Point IV. The circuit court of appeals erred in misconceiving the nature of this action in the district court, considering it on the basis of a statutory will contest, instead of an original action in equity, to prevent the law from forcing injustice, guard rights, protect privileges and immunities of citizens of the United States, and to enjoin and deprive forgers and thieves of their plunder taken under the mantle of an official act of the state; and said misconception of the court is extended to the application of the facts, to the statutes and the decisions of the courts of Missouri	26
Missouri Constitution and statutes.....	28
Judgment of state court is a nullity.....	32
Matters overlooked.....	33
Admitted facts	34
Conclusion	34

TABLE OF CASES

Arrowsmith vs. Gleason, 129 U. S. 86	20
Callahan vs. Huhlman, 343 Mo. 625, 96 S. W. 2d 704-706	32
Camp vs. Gress, 250 U. S. 308, 63 L. Ed. 997	26
Captain vs. Mississippi Valley Trust Co., 240 Mo. 495, 144 S. W. 466	31
Central Trust Co. vs. McGeorge, 151 U. S. 129, 38 L. Ed. 98	26
Chase Nat. Bk. vs. Norwalk, 291 U. S. 431-441	20
Chicago, B. & Q. Ry. Co. vs. Chicago, 66 U. S. 226, 41 L. Ed. 979	21
Gaines vs. Fuentes, 92 U. S. 10	20
Home Tel. Co. vs. Los Angeles, 227 U. S. 278	22
Kelkam vs. Md. Casualty Co., 312 U. S. 377-382	20
Kelly vs. Murdock, 184 Mo. 377, 83 S. W. 437	33
Kring vs. State of Missouri, 107 U. S. 221	6, 21, 28, 34
Lowery Co. vs. Nat'l City Bank, 28 F. 2d 895	26
Marshall vs. Holmes, 141 U. S. 589	20
Mosher vs. City of Phoenix, 287 U. S. 29-32, 77 L. Ed. 148	6, 18, 19, 26
Packing Co. vs. Gas Co., 309 U. S. 4-9	20
Pyle vs. State of Kansas, 317 U. S. 213	6, 21, 28, 34
Scott vs. Royston, 223 Mo. 568, 123 S. W. 454, 467	31, 32, 34
Simon vs. Southern Ry. Co., 236 U. S. 115	19, 20, 21
Smith vs. Apple, 264 U. S. 274	20
St. Louis Ry. Co. vs. McBride, 141 U. S. 131, 35 L. Ed. 659, 661	26
The Proprietors of Bridges vs. Hoboken Land and Improvement Company, 1 Wallace 116, 68 U. S. 142, 17 L. Ed. 571	18
Tooker vs. Leak, 146 Mo. 419, 48 S. W. 638, 642	33
Toucy vs. N. Y. Life Ins. Co., 314 U. S. 118-120	20
Virginia vs. Rives, 100 U. S. 313-318-347	22, 23
Wells Fargo vs. Taylor, 254 U. S. 175	20
Wetmore vs. Rymer, 169 U. S. 115-128, 42 L. Ed. 682-686	19

Westmeyer vs. Gallenkamp, 154 Mo. 28, 55 S. W. 231	31, 34
Wichita R. & L. Co. vs. Pub. U. Com., 260 U. S. 48, 67 L. Ed. 124-128	25

STATUTES

Constitution of United States, Section 2, Article III	2, 13, 14, 16, 18
Constitution of United States, Section 2, Article IV	2, 14, 16, 18, 34
Constitution of United States, 14th Amendment, Section 1	2, 3, 6, 13, 14, 16, 18, 21, 34
Constitution of United States, Section 3, Article IV	13
Constitution of Missouri, Section 38, Article VI	21
Equity Rule 37	25
Judicial Code, Section 240	2
R. S. Mo., 1929, Sec. 528, now Sec. 539, R. S. Mo., 1939	14, 28, 32
R. S. Mo., 1939, Sec. 905	21
R. S. Mo., 1929, Sec. 306	28, 30
R. S. Mo., 1929, Sec. 716	29, 30, 31, 34
R. S. Mo., 1929, Sec. 724	29
R. S. Mo., 1929, Sec. 727	29
R. S. Mo., 1929, Sec. 728	29
R. S. Mo., 1929, Sec. 741	29, 33
R. S. Mo., 1929, Sec. 748	29
Rules of Civil Procedure for District Courts, Rule 8 (a) (1)	25
Rules of Civil Procedure for District Courts, Rule 19 (a)	26

TEXTBOOK

12 Corpus Juris, pages 1195-1196, Section 961	22
---	----

Supreme Court of the United States

OCTOBER TERM, 1943.

No. _____

WADE S. THOMSON, JOHN W. THOMSON, COURTNEY
L. THOMSON, OLIVER C. THOMSON, MYRA M.
JOHNSON, JULIA ELIZABETH THOMSON, BERTHA
THOMSON, GUARDIAN FOR EUGENE THOMSON,
HUSTON THOMSON, CALVIN C. THOMSON, MINORS,
AND LILLIAN CRAWFORD, PETITIONERS,

VS.

LETA BUTLER, ROZELL GRIFFITH, LAURA THOMAS
SHEPPARD AND COM. P. STORTS, EXECUTOR,
RESPONDENTS.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

To the Honorable the Chief Justice and Associated Justices of the Supreme Court of the United States:

Your petitioners, in support of their Petition for a Writ of Certiorari, to review the final judgment of the United States Circuit Court of Appeals for the Eighth Circuit, affirming a decree and orders of the District Court for the Western Division of the Western District of Missouri, at Kansas City, respectfully show:

A.

Summary Statement of the Matter Involved.

This proceeding in said Circuit Court of Appeals was an appeal to review a decree and orders of said District Court dismissing for want of jurisdiction an original suit in Equity by citizens and residents of Oklahoma, Texas and Indiana, against Citizens and residents of Missouri, where the matter in controversy exceeds \$3,000, to enjoin conspirant producers and devisees of a counterfeit Will, established by a judgment of the State court of Missouri, procured by fraud, without service of summons, process or notice, whereby petitioners, lawful heirs of Laura E. Saltonstall, deceased, were deprived of their property without due process of law and in violation of the 14th Amendment, stripped of their privileges and immunities, denied equal protection under the law, and deprived of their rights and titles to 1,000 acres of land and other real and personal property of said estate located in Saline County, Missouri, valued at \$100,000. The complaint (R. 1-10) alleges ultimate and constitutive facts which invoke an application or construction of the Constitution of the United States, namely: Section 2 of Article III, Section 2 of Article IV, and Section 1 of the 14th Amendment to the Constitution of the United States, to determine the rights, privileges and immunities asserted and relied upon in said complaint.

B.

Statement of the Jurisdiction of This Court.

1. Jurisdiction vests by the timely filed Petition for a Writ of Certiorari against the judgment of the said Circuit Court of Appeals.
2. Jurisdiction is invoked under Section 240 of Judicial Code as amended.
3. Jurisdiction is invoked because a Federal Question is alleged in the complaint.

C.

Date of Judgment to Be Reviewed.

Judgment of said Circuit Court of Appeals affirming the decree of said District Court was entered June 9, 1943; a timely Motion for Rehearing was overruled July 8, 1943; and the opinion of said Circuit Court of Appeals appears in _____ F. 2d _____ (R. 77 to 85).

This petition with supporting Brief and certified record are filed within three months next after the final judgment herein sought to be reviewed.

Statement of the Nature of the Case and the Rulings Bringing the Case Within the Jurisdiction of This Court.

The case originated in the Circuit Court of Saline County, Missouri, wherein your petitioners were named as parties defendant in the petition upon which judgment was taken against them therein, without summons or process being served on them, as required by the statutes of Missouri; that a forged Will was probated and judgment of the State court was procured by fraud, without process or notice, thereby disinheriting and defrauding your petitioners, lawful heirs to the estate of Laura E. Saltonstall, deceased, and to the advantage of respondents, who are strangers to the blood of decedent; that all of said proceedings were unbeknown to your petitioners until the Supreme Court of Missouri affirmed said judgment, whereupon your petitioners filed a complaint (R. 1-10), in equity in the United States District Court at Kansas City, alleging violations of the Constitution of the United States, that their property had been taken without due process of law, in violation of Section 1 of the 14th Amendment (R. 8); that their rights, privileges and immunities had been abridged, that the State by rendering said judgment had deprived them of their property without due process of law, that the State had denied them equal protection of the laws, that infant citizens of Oklahoma had

been treated differently from infant citizens of Missouri; and praying that respondents, by reason of the fraud they had committed, in procuring said judgment, be restrained from enjoying the benefits of said judgment, and for equitable relief (R. 10).

The Said Circuit Court of Appeals Ruled.

(R. 77-85:)

1. On page 81 of record, held:

"We must hold, also, that the trial court was correct in declaring that it had no jurisdiction of plaintiff's suit on the basis of a federal question being involved" * * * "They present no question here arising under the Constitution of the United States."

2. On page 81 of record, held:

"The due process clause of the 14th Amendment is not a guarantee against the use or results of perjury or fraud by parties to private litigation in state courts, uncountenanced by the general standards and processes of the state court system, nor does it afford a constitutional basis for relief in the federal courts from a judgment in such litigation obtained by these means;"

thereby implying that the judgment rendered by a judge of a state court, is not the act of the State.

3. On pages 78, 80-81 of record, held:

"The trial court properly held that the necessary diversity of citizenship was lacking to give a federal court jurisdiction on that ground. Frank Bush, one of the legatees under the will, was a resident of the same state as some of the plaintiffs";

and on page 80 said:

"It is clear, therefore, that Frank Bush was not and could not be a proper party plaintiff in the present suit, under Missouri law. On the other hand, unless and until he renounced all his rights under the will,

he was required to be made a party to the litigation and his interest, by legal imputation, was necessarily that of a defendant."

And on page 81, said:

"Plaintiffs accordingly are unable to contend that the trial court erred or abused its discretion in permitting Frank Bush to enter his appearance as a party defendant and to resist their attack upon the state court judgment."

4. On pages 82 and 83 of record, held:

"There is also no merit in the argument of plaintiffs that no publication could in any event validly be made under section 891, without the previous issuance of a summons, a return that 'the defendant or defendants cannot be found,' and a finding that the court is 'satisfied that process cannot be served,' as provided in section 893." * * *

On page 83 said:

"But there is no occasion to discuss further the provisions of the Missouri statutes relative to service of process, for another reason also exists why the service upon plaintiffs in the state court proceeding cannot be claimed here to be violative of due process. Plaintiffs' attack upon the service proceeds upon the assumption that they were necessary parties to the will contest, but such is not the case under Missouri law."

Cases Believed to Sustain Jurisdiction of This Court.

This court is vested with jurisdiction whenever there has been any violation of the Constitution of the United States, regardless of whether or not there be diversity of citizenship of the parties.

The following cases hold that where the complaint alleges an attempted appropriation of property or rights

without due process of law, in violation of the 14th Amendment to the Constitution of the United States, then a substantial Federal Question is presented.

Mosher v. City of Phoenix, 287 U. S. 29.

Kring v. State of Missouri, 107 U. S. 221.

Pyle v. State of Kansas, 317 U. S. 213.

C.

Questions Presented.

1. Does the complaint present a Federal Question?
2. Was the act of the Judge of the State Court, in rendering judgment therein, the act of the State, and does it bring it under the provisions of the 14th Amendment of the Constitution of the United States?
3. Can Frank Bush, who, while acting in good faith, under oath, voluntarily signed and filed a statement, entry of appearance and adoption of the complaint, a copy of which he attached to his affidavit, as a plaintiff in said District Court, then 5 months later after colluding in the interest of respondents, be allowed to change by an unsworn, unauthenticated, inconsistent, ancillary, purported entry of appearance as a defendant, with an interest of only \$500 from the forged will, when as a plaintiff he had an interest of \$2,000 in said estate, and when the change was a trick, a fraud, to deceive and mislead the court and affect its jurisdiction; and does not such conduct amount to a violation of the intendment of the Constitution of the United States which declares that one of its prime purposes is to establish justice?
4. Should an opinion be allowed to stand which misconceives the nature of this action, considering it on the basis of a will contest suit, instead of an action in Equity whose processes are to prevent the use of the law to effect injustice, and deprive forgers and thieves of their plunder; and should this misconception be allowed to be

applied in various rulings so that it conflicts with the admitted facts, the statutes and decisions of the courts of Missouri, rendering them meaningless; and is not such misconception contrary to the intendment and theory of the establishment of justice purposed by the Constitution of the United States?

D.

Reasons Relied On for the Allowance of the Writ.

1. Because the complaint presents a substantial Federal Question and the ruling of the court below is in conflict with applicable decisions of this Court.

2. Because the act of the Judge of the State Court in rendering judgment therein, was and is the act of the State, bringing it under the provisions of the 14th Amendment to the Constitution of the United States, and the ruling of the court below is in conflict with applicable decisions of this Court.

3. Because Frank Bush, who, while acting in good faith, under oath, voluntarily signed and filed a statement and entry of appearance in the District Court attaching copy of the complaint to his affidavit, approved and ordered filed by the court, then 5 months later after colluding in the interest of respondents, should not be allowed to change by an unsworn, unauthenticated, inconsistent, ancillary, purported entry of appearance as a defendant, for a \$500 interest in the forged will, when as a plaintiff he had \$2,000 interest in said estate, it being a trick, a fraud, to deceive and mislead the District Court and affect its jurisdiction, amounting to a violation of the intendment of the Constitution of the United States which declares that one of its prime purposes is to establish justice.

4. Because the opinion of the court below misconceives the nature of this action, considering it on the

basis of a will contest suit, instead of an action in Equity, whose processes are to prevent the use of the law to effect injustice, guard rights, privileges and immunities of its citizens and deprive forgers and thieves of their plunder; and which misconception as applied in various rulings conflicts with the admitted facts, with the statutes and the decisions of the courts of Missouri, amounting to a violation of the intendment and theory of the establishment of justice, purposed by the Constitution of the United States.

Conclusion.

Each of the questions presented is of grave importance. Unless the opinion below is reviewed, the question of civil rights of the citizen will be left in confusion and doubt.

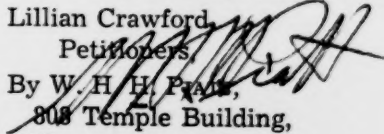
Wherefore, your petitioners pray that a Writ of Certiorari issue under the seal of this court, directed to the United States Circuit Court of Appeals for the Eighth Circuit, commanding said court to certify and send to this Court a full and complete transcript of the record and proceedings of said Circuit Court of Appeals in the case numbered and entitled on its docket as Number 12435, *Wade S. Thomson et al., Appellants, v. Leta Butler et al., Appellees*, to the end that this cause may be reviewed and determined by this Court, as provided by the statutes of the United States; and that the judgment of the said Circuit Court of Appeals be reversed by this court; and your petitioners pray that the certified copy of the record and proceedings of said Circuit Court of Appeals for the Eighth Circuit filed with this petition, may be treated as a return to said Writ of Certiorari; and your petitioners pray that they may have such other and further remedies

as to the Court may seem just, appropriate and in conformity with law.

Wade S. Thomson,
John W. Thomson,
Courtney L. Thomson,
Oliver C. Thomson,
Myra M. Johnson,
Julia Elizabeth Thomson,
Bertha Thomson,

Guardian for Eugene
Thomson, Huston Thomson
and Calvin C. Thomson,
Minors, and

Lillian Crawford,
Petitioners,

By  W. H. H. Pratt,
808 Temple Building,
Kansas City, Missouri,
Counsel for Petitioners.

ERNEST D. MARTIN,
1121 Gloyd Building,
Kansas City, Missouri,
Of Counsel.